IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16445 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAMLAJI VIBHAGIYA CO-OP. PURCHASE & SALES UNION LTD. & 1 - Petitioner(s)
Versus
STATE OF GUJARAT THRO' THE SECRETARY & 3 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 – 2.
MRS RANJAN B PATEL for Petitioner(s) : 1 - 2.
MR DR CHAUHAN AGP for Respondent(s) : 1 -4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 25/07/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Leave to add Agriculture Produce Market Committee, Vijaynagar (to be served through the Administrator at Market Yard, Vijaynagar, Dist. Sabarkantha) as respondent No.5.

Rule. Mr DR Chauhan, learned AGP waives service of Rule for the respondents. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The petitioners have challenged the inaction on the part of the respondent-authorities in not holding elections to Agriculture Produce Market committee, Bhiloda and Agriculture Produce Market Committee, Vijaynagar for the last about eight years.

3. APMC Bhiloda was bifurcated into APMC Bhiloda and APMC Vijaynagar by Government notification dated 29.4.1999 under Section 52 of the Agriculture Produce Market Committee Act (hereinafter referred to as “the Act”). Consequent upon the said notification, the Government also issued notification under Section 54 constituting two separate committees consisting of members nominated by the State Government under sub-section (3) of Section 54. The members of such new market committee could hold office for such period not exceeding two years as the State Government may by order in writing specify. Upon expiry of the said period of maximum two years, the market committee was required to be re-constituted in the manner provided under Section 11 of the Act. However, when that two year period was about to expire, the State Government issued notification dated 31.3.2001 inviting objections for amalgamation of APMC Bhiloda and APMC Vijaynagar and that this was after declaration of the election program on 11.1.2001 for holding elections on 16.4.2001.

The said notification dated 31.3.2001 proposing amalgamation of the two APMCs came to be challenged in Special Civil Application No.9967 of 2001 wherein, as per the statement made by the learned AGP, the proposed amalgamation was stayed by an interim order. Ultimately, the State Government decided by

Government notification dated 27.6.2006 (Annexure-D) to withdrew the notification dated 31.3.2001 and constituted two separate market committees for APMC Vijaynagar and APMC Bhiloda. By the same notification, the Government also appointed the Deputy Director of Agricultural Marketing and Rural Finance as the Adminstrator of both the market committees under Section 11(5)(a)(i). The Administrator continues to run the two market committees.

4. The grievance in the present petition is that apart from the prolong inaction on the part of the respondents in not holding elections to two APMCs, even the term of the Administrator appointed under Section 11(5)(a)(i) of the Act has come to an end on 26.6.2007 and, therefore, the elections are overdue.

5. Mr Chauhan, learned AGP for the respondents has opposed the petition and submitted that under Section 54(3) of the Act the term of members of the new market committee may be upto two years as the State Government may specify and, therefore, the elections are due only in June 2008.

6. Having heard the learned advocates for the parties, we find considerable substance in the submission of Mr Patel for the petitioners that once the Government decided on 27.6.2006 to cancel the proposed amalgamation under notification dated 31.3.2001, there could be no question of resorting to the provisions of Section 54(3) of the Act. Section 54 is applicable in cases where the limits of market area of a market committee are altered or the market area is divided in two or more separate market areas which is a decision to be taken under Section 52 of the Act. That division had already taken place way back on 29.4.1999. The appointment of the Administrator on 27.6.2006 was obviously in exercise of the powers under Section 11(5)(a)(i) which provides that where the term of office of a market committee has expired, the State

Government shall appoint the Administrator to manage the affairs of the market committee till the date of the first general meeting of the market committee which may be reconstituted. Sub-clause (ii) specifically provides as under :-

> "the market committee shall be reconstituted within such period not exceeding one year in the aggregate as may be specified in the order."

7. The scheme of the APMC Act is that every market committee shall consist of 14 (or at least 13) elected members, one member to be nominated by the local authority and two members to be nominated by the State Government. The market committee is thus to be administered by elected members. For any reason if the elections to market committee are not held before expiry of the term of the outgoing market committee, sub-section (5) of Section 11 comes into operation and in order to avoid any vacuum or hiatus, the State Government is required to appoint an Administrator under Section 11(5)(a)(i) for the purpose of managing affairs of the market committee till the next market committee takes over. Sub-clause (ii) specifically provides that the appointment of the Administrator cannot exceed one year in the aggregate. Mr Patel is, therefore, justified in contending that the period of one year under the above provision has already expired on 26.6.2007.

8. In view of the above, we have no other alternative but to direct the respondent-authorities to hold elections to APMC Bhiloda and APMC Vijaynagar as expeditiously as possible. In view of the scheme of the APMC Rules providing for different stages of election with certain minimum time-limits and also having regard to the fact that the general elections to the State Assembly are going to be held in November 2007, we direct that the elections to APMC

Bhiloda and APMC Vijaynagar shall be held by 31st December 2007.

It is clarified that in view of the above direction, the respondent shall take all necessary steps for holding the elections within the above time-limit and till then may continue the appointment of the Administrator already made.

Rule is made absolute.

Direct service is permitted.

(M.S. SHAH, J.)

(K.A. PUJ, J.)

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